

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

P.J.C. SANITATION SERVICE, INC.,
d/b/a ACE SERVICE
Employer

and

DANIEL McCLEAN
Petitioner

Case No. 29-RD-1058

and

LOCAL 813, INTERNATIONAL
BROTHERHOOD OF
TEAMSTERS Union

DECISION AND DIRECTION OF ELECTION

P.J.C. Sanitation Service, Inc., d/b/a Ace Service (herein called “P.J.C. Sanitation” or “the Employer”) is engaged in providing waste removal services. Its drivers (“chauffeurs”) and helpers have been represented for purposes of collective bargaining by Local 813, International of Teamsters (“the Union”). The most recent contract between the Employer and the Union was effective from December 1, 2002, through November 30, 2005. On February 6, 2006, employee Daniel McClean “(the Petitioner)” filed a petition under Section 9(c) of the National Labor Relations Act, seeking to decertify the Union as the drivers’ and helpers’ representative.

There is no dispute that the Union, P.J.C. Sanitation and other waste-removal employers began negotiations in November 2005 for a successor contract, and that the contract expired on November 30, 2005. The Union contends that there was some kind

of “meeting of the minds” as of January 27, 2006; that at least some of the employers signed a Memorandum of Agreement thereafter; and that the petition must be dismissed because of a “contract bar,” even though P.J.C. Sanitation did not sign the Memorandum. A hearing was held before Ashok Bokde, a hearing officer of the National Labor Relations Board, on the contract bar issue.

It is well settled that only signed documents may serve to bar an election under certain circumstances. Accordingly, I reject the Union’s argument and will direct an election below.

Discussion

The Union submitted evidence that it was engaged in some kind of coordinated bargaining with PJC Sanitation and other employers, from early November 2005 until late January 2006. There is no evidence that P.J.C. Sanitation agreed to be bound by any “multi-employer” bargaining. The details of the bargaining, and of the related documents, and of P.J.C. Sanitation’s apparent failure to sign a “Memorandum of Agreement” (Union Exhibit 8) which some other employers subsequently signed, will not be described herein. The undisputed fact is that there is no document, or set of documents, executed by both the Union and P.J.C. Sanitation, that establish that the parties reached a final agreement of any kind, let alone one that is sufficient to bar an election at the time the decertification petition was filed on February 6, 2006.

It has been well settled for almost 50 years that only a written, signed document may bar an election. Appalachian Shale Products, Co., 121 NLRB 1160 (1958). The Union has cited no cases to the contrary.

Accordingly, I find that there is no bar to an election at this time.

CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, including the parties' stipulations and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated that P.J.C. Sanitation Service, Inc., d/b/a Ace Service, is a domestic corporation, with its principal office and place of business located at 590 Atkins Avenue, Brooklyn, New York. It is engaged in providing waste removal services. During the past year, which period is representative of its annual operations generally, the Employer has purchased and received at its Brooklyn, New York facility materials valued in excess of \$50,000, directly from suppliers located outside the State of New York.

Based on the parties' stipulation, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I hereby find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The parties stipulated that the bargaining unit described in the parties' recent collective bargaining agreement constitutes an appropriate unit for the purposes

of collective bargaining. I hereby find that the following unit, based on the contractual unit, constitutes an appropriate unit for purposes of collective bargaining, within the meaning of Section 9(b) of the Act:

All Chauffeurs and Helpers employed at all locations of the Employer, but excluding owners of the Employer, those Employees not eligible for membership in the Union in accordance with the provisions of the Labor Relations Management Act of 1947, as amended, and excluding all other employees, guards and supervisors as defined in the National Labor Relations Act. The area of work includes, but not by way of limitation, loading and/or removing garbage, rubbish, cinders, ashes, waste materials, building debris and

similar products.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and

who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by Local 813, International Brotherhood of Teamsters.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before **March 6, 2006**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by March 13, 2006.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov.

Dated: February 27, 2006.

ALVIN BLYER

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201